

CRIMINAL REVISION APPLICATION NO. 38 OF 2001.

Bhalchandra s/o Shriniwas Bakhle,
Managing Director of M/s. Bakhle
Tyresoles Pvt. Ltd., Vasco da Gama. ... Applicant.

Versus

1. The Maharashtra State Financial Corporation, a Body Corporate, constituted under the State Financial Corporation Act, 1951 with Head Office at New Excelsior Building, A.K. Nayak Marg, Fort, Bombay, and alleged to be represented by Shri P.M. Kaissary, Deputy Manager (Recovery), presently working with MSFC's Goa Divisional Office at Lobo Building, 2nd Floor, 18th June Road, Panaji.
2. Shri D.K. Sharma, presently working as Manager (Law) with MSFC's Aurangabad Divisional Office at Mahavitta Bhavan, Station Road, Aurangabad.
3. Shri P.A. Kharat, Retired Regional Manager of MSFC, presently residing at S-2, Prabhakar Complex, Rajarampuri, 8th Lane, Kolhapur.
4. The State of Goa. ... Respondents.

Mr. Nitin Sardessai, Advocate for the Applicant.

Mrs. S. Naik, Advocate for the Respondents 1 to 3.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 4 State.

Coram : P.V. HARDAS, J.

Date : 19th/20th June 2003.

ORAL JUDGMENT.

The applicant/original complainant, being aggrieved by the Judgment, dated 15th February 2001,

passed by the Sessions Judge, South Goa, Margao, in Criminal Revision Application No. 64 of 2000, filed at the instance of the present respondents 1 to 3, has filed the present revision challenging the aforesaid Judgment. The learned Sessions Judge, South Goa, Margao, by the aforesaid Judgment had allowed the Criminal Revision Application filed by the present respondents 1 to 3 and had dismissed the Criminal Case No. 23/P/1994, filed by the present applicant, against the present respondents 1 to 3 and 11 others.

2. The applicant/original complainant had filed a complaint before the Judicial Magistrate, First Class, Vasco, on 1st February 1994, alleging therein that the respondents 1 to 3 and 11 others had committed offences punishable under Sections 193, 196, 197, 199, 208, 209, 210, 420 and 477-A read with Section 34 of the Indian Penal Code. It was alleged by the applicant that the applicant was the Managing Director of M/s. Bakhle Tyresoles Private Limited having its Registered Office at Vasco-da-Gama and its factory situated at Kakoda Industrial Estate, Kakoda, Curchorem. In paragraph 3 of the complaint, which is annexed to the revision memo as Exhibit 'C', the accused have been described as being connected in their official capacity as employees of the Maharashtra State Financial Corporation (hereinafter referred to as 'M.S.F.C.' for the sake of brevity). The

accused no. 2 therein was described as the Chairperson of the M.S.F.C.. It is alleged by the applicant that he had applied for project finance on 4th November 1985 and had requested the M.S.F.C. for a term loan for the purchase of machinery, building and plot. The M.S.F.C. had sanctioned a total loan of Rs. 24.15 lakhs somewhere in April 1986. The loan was to be re-financed by the Industrial Development Bank of India. The major grievance in the complaint seems to be that the M.S.F.C. had been deducting certain sums towards the deposit insurance and credit guarantee. Subsequent inquiries conducted by the applicant revealed that since 1985 the M.S.F.C. was not participating in the aforesaid scheme of the Credit Guarantee Corporation and the M.S.F.C. was not entitled to charge any guarantee fees. Thus, the complainant alleged that by charging the credit guarantee fee, the M.S.F.c. and the accused named therein had committed an offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

3. Mr. Nitin Sardessai, learned counsel appearing for the applicant, at the very outset, has stated that offences under Sections 193, 196, 197, 199, 208, 209 and 210 of the Indian Penal Code are offences which the learned Judicial Magistrate, First Class, was not entitled to issue process for. The learned

counsel has, thus, restricted the scope of the complaint to the offence punishable under Section 420 read with Section 34 of Indian Penal Code and the offence of criminal breach of trust if the allegations in the complaint reveal the commission of the said offence. Be that as it may, on the presentation of the complaint, the learned Magistrate recorded the verification statement of the applicant/complainant and on perusal of the affidavit of two witnesses and the documents in support of the complaint, by his Order, dated 20th October 2000, issued process against all the accused for offences punishable under Sections 193, 196, 197, 199, 208, 209, 210, 420 and 477-A, read with Section 34 of the Indian Penal Code.

4. The present respondents 1 to 3 being aggrieved by the issuance of process, filed Criminal Revision Application No. 64 of 2000 before the Sessions Judge, South Goa, Margao. In the said revision the applicant/complainant was respondent no. 1 and respondents 2 to 12 were the other 11 accused. It appears from a perusal of the Judgment of the learned Sessions Judge at paragraph 2 that respondents 2 to 12, that is, the 11 other accused could not be served and, therefore, by an application, dated 31st January 2001, the names of the respondents 2 to 12 were deleted. Thus, in effect the other 11 accused had neither

challenged the Order of issuance of process nor they were parties to the revision before the learned Sessions Judge.

5. The learned Sessions Judge, by his Judgment at paragraph 17 has held that the learned Judicial Magistrate, First Class, had unfortunately taken into account wild and general allegations made by the complainant for issuing process against the accused. The learned Sessions Judge has also made a reference to the report of the Police Officer under Section 202 of the Code of Criminal Procedure. The learned Sessions Judge has held that the report of the Police Officer, dated 20th March 1997 states that no offence was made out against the accused and, according to the learned Sessions Judge, if the Judicial Magistrate, First Class, had perused the said report, process ought not to have been issued merely relying on the verification statement of the complainant. The learned Sessions Judge also came to the conclusion by referring to certain Civil Suit filed by the applicant against the M.S.F.C. wherein the learned Civil Judge, Senior Division had held that the M.S.F.C. was justified in charging interest at the rate of 13.5%. The learned Sessions Judge has further observed that the learned Judicial Magistrate, First Class ought not to have relied upon the two affidavits of the witnesses filed by the

complainant. The learned Sessions Judge has also meticulously examined the statement of account and has come to the conclusion that the summary statement of account, which was filed, was only a xerox copy, which did not bear the signature of either the accountant or any of the accused and carried a lot of additions, which do not appear to have been initialled. The case of the complainant in his verification statement on oath was restricted only to the collection of guarantee fee by the Corporation.

6. Prima facie, it does appear from the material placed by the complainant on record that the M.S.F.C. had collected the credit guarantee fee, though it was not entitled to charge any guarantee fee as the M.S.F.C. did not participate in the scheme of the deposit insurance and Credit Guarantee Corporation. Prima facie, therefore, according to me, the complaint does disclose an offence punishable under Section 420 read with Section 34 of the Indian Penal Code. At the stage of issuance of process a meticulous examination of the material produced by the complainant in support of the aforesaid charges cannot be undertaken. The Court also cannot examine the material in the light of the proposed defence, which the accused is likely to take. In other words, a minute dissection of the case of the complainant, at this stage, is wholly inconceivable. It

is true that summoning of an accused before the Court is a very serious matter and the accused has to undergo the rigours of a trial. If the averments of the complainant supported by the verification statement and the other documents disclose an offence, the Magistrate would certainly be entitled to issue process. According to me, the learned Sessions Judge has undertaken a meticulous examination of the allegations and the material produced on record by the complainant, which is wholly impermissible. Even if the affidavits of the two witnesses are not taken into consideration, there was enough material on the basis of which issuance of process is justified.

7. It is true that in response to the Order of the trial Court under Section 202 of the Code of Criminal Procedure the Police had submitted a report, dated 20th March 1997. According to the police, on inquiry it transpired that no offence as alleged by the complainant is made out. The report is based principally upon a statement of the Regional Manager of M.S.F.C., Regional Office, Panaji, Goa. The report refers to certain civil suits, which had been filed. Admittedly, in those civil suits the question of charging of guarantee money on the ground that the M.S.F.C. was not entitled to charge had not been gone into. Mr. Nitin Sardesai, the learned counsel

appearing for the applicant, has urged before me that the mere ipse dixit by the police in submitting the report that an offence is not made out is not binding on the learned Magistrate and the learned Magistrate is not precluded from examining the verification statement and the documents to determine whether a prima facie case is made out. Mr. Nitin Sardessai, learned counsel appearing for the applicant has placed reliance on the Judgment of the Supreme Court in **Pramatha Nath Talukdar and another v. Saroj Ranjan Sarkar**, A.I.R. 1962 S.C. 876. The Supreme Court in paragraph 48 of the Judgment has held thus:-

"...The scope of enquiry under S. 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and S. 203 lays down what materials are to be considered for the purpose. Under S. 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under S. 202 Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously."

8. A reference may usefully be made to the Judgment of the Supreme Court in **Vadilal Panchal v.**

Dattatraya Dulaji Ghadigaonkar and another, A.I.R. 1960
S.C. 1113. The Supreme Court in paragraph 10 has held
thus:-

"...It is manifestly clear from the provisions of S. 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the inquiring officer says nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not."
(Emphasis supplied).

9. From the aforesaid Judgments of the Supreme Court it is clear that the Magistrate is not bound to accept the report of the police submitted under Section 202 mechanically. The Magistrate has to apply his mind judicially to the complaint, verification statement and the documents produced in support of the complaint to determine whether there are grounds for proceeding

further by issuing process to the accused. Records and proceedings of this case have been called for and I have perused the report of the police. The said report is very cryptic and, according to me, it appears that the learned trial Magistrate was justified in ignoring the report and examining the material produced by the complainant to determine whether prima facie a case was made out for issuance of process to the accused. The Order of the learned Magistrate, therefore, cannot be faulted on the ground that the learned Magistrate has proceeded to issue process ignoring the report of the police submitted under Section 202 of the Code of Criminal Procedure.

10. Mrs. Naik, the learned counsel appearing on behalf of respondents 1 to 3, has placed reliance on the Judgment of the Supreme Court in **S.W. Palanikar and others v. State of Bihar and another**, (2002) 1 S.C.C. 241 to urge before me that the complaint does not disclose that the accused had any dishonest intention when the alleged representation was made. In the Judgment before the Supreme Court, the Supreme Court has observed that there was nothing either in the complaint and/or in the several statements of the complainant or any of the witnesses that any property was entrusted to any of the accused or that the accused had domain over any property of the complainant which the accused

converted to their own use to satisfy the ingredients of Section 405 of the Indian Penal Code punishable under Section 406 of the Indian Penal Code. Thus, the Supreme Court held that taking the complaint and the statement of the witnesses as they are, it cannot be said even prima facie that the appellants therein had committed any offence punishable under Section 406 of the Indian Penal Code. In my respectful opinion the facts of the Judgment cited before me are not applicable to the facts of the present case. In the present case, admittedly, the M.S.F.C. was not entitled to charge guarantee money, since they had not participated in the scheme of deposit insurance and credit guarantee corporation. The representation which had been held out and the amount deducted would certainly disclose the dishonest or fraudulent intention on the part of the M.S.F.C.. At least such a prima facie finding can be arrived at, at the stage of issuance of process. It is a different matter altogether that on recording of the evidence, the Court may come to the conclusion that there is no evidence regarding the dishonest intention. The Court while issuing process is not to consider whether the material is sufficient for conviction. The Court has only to see whether on examination of the material a prima facie offence is disclosed.

11. After giving my anxious consideration to the

rival submissions, I am of the opinion that the Judgment of the learned Sessions Judge, South Goa, Margao, dated 15th February 2001, in Criminal Revision Application No. 64 of 2000, is wholly unsustainable and deserves to be quashed and set aside. Accordingly, Criminal Revision Application is allowed. The Judgment of the Sessions Judge impugned in this revision insofar as it quashes the Order of the trial Court issuing process against the accused for offences punishable under Sections 193, 196, 197, 199, 208 209 and 210 of the Indian Penal Code is maintained. The Judgment of the Sessions Judge insofar as quashing the issuance of process under Sections 420 and 477-A read with Section 34 of the Indian penal Code is, hereby, quashed and set aside and the complaint is restored to file. The learned Judicial Magistrate, First Class, shall proceed to decide the complaint case as per law.

(P.V. HARDAS)
JUDGE.

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